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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,417	04/20/2004	Michael E. Bell	4480-65	2581
23117	7590	12/14/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/827,417	BELL, MICHAEL E.
	Examiner	Art Unit
	Cheryl Juska	1771

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 22 September 2006.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 15, 17-24 and 28-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 15, 17-24 and 28-31 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 22 September 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed September 22, 2006, has been entered. Claim 15, 17, 24, and 28 have been amended as requested. Claims 1-14, 16, 25-27, and 32 are cancelled. Hence, the pending claims are 15, 17-24, and 28-31.
2. Said amendment renders moot the objection to claim 16 set forth in section 7 of the last Office Action. Additionally, said amendment is sufficient to withdraw the prior art rejections based upon the Chen reference (WO 99/40250) as set forth in sections 9 and 12 of the last Office Action. Specifically, independent claim 15 has been amended to limit the waste carpeting first material to being heated to enable said material to flow (i.e., limitation of step (c) of independent claim 24). Independent claim 28 has been similarly amended to require the method to include the step of combining the waste carpeting in a molten form. Since Chen merely fuses the recycled carpet powder or adds said powder to a liquid adhesive, the present claims are patentably distinct from the Chen invention.
3. Furthermore, said amendment is sufficient to withdraw the 102 rejection of claim 24 by the cited Moryama reference (JP 60-206868) as set forth in section 10 of the last Office Action. Specifically, applicant has amended claim 24 to include the limitation of cancelled claim 25. Since claim 25 was not previously anticipated by said art, the 102 rejection of claim 24 is hereby withdrawn.

***Drawings***

4. The replacement drawings were received on September 22, 2006. These drawings are sufficient to withdraw the objection to the drawings as set forth in section 3 of the last Office Action.

***Terminal Disclaimer***

5. The terminal disclaimer filed on September 22, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,786,988 issued to Bell has been reviewed and is accepted. The terminal disclaimer has been recorded. As such, the double patenting rejection set forth in section 5 of the last Office Action is hereby withdrawn.

***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Art Unit: 1771

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 15 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 7,045,590. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims encompass the present claim. Note this rejection is maintained from the provisional double patenting rejection set forth in section 6 of the last Office Action. The terminal disclaimer filed September 22, 2006, did not address this double patenting rejection and applicant did not otherwise traverse said rejection. Hence, said rejection is maintained.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Moryama reference in view of the cited Chen reference

As noted above, applicant has amended claim 24 to include the limitation of claim 25.

As such, claim 24 is now rejected under 103 for reasons analogous to those set forth in the rejection of claim 25 (see section 10 and section 13, 4<sup>th</sup> paragraph of the last Office Action). To reiterate, Moryama discloses a method of recycling waste carpet comprising the steps of collecting waste carpet materials, grinding said carpet to small chips, mixing said chips with additional synthetic resin, and extruding said mixture (i.e., heating to a temperature to enable flow) onto a new carpet as a backcoat material (abstract and English translation, page 2, lines 5-18 and page 5, lines 17-31). Moryama does not explicitly teach the claimed fiberglass carpet

Art Unit: 1771

substrate as recited in amended claim 24. However, said fiberglass substrates are well known in the art of carpets as suitable materials for reinforcement of said carpet. For example, Chen teaches the use of a fiberglass reinforcement layer (page 10, lines 8-13). Chen employs a fiberglass fleece backing layer in Example 1 (page 13, lines 19-25). Therefore, it would have been obvious to one skilled in the art to employ a fiberglass layer in the Moryama carpet as a reinforcement layer. Hence, claim 24 is rejected as being obvious over the cited prior art.

10. Claims 15, 17-23, and 28-31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Moryama reference in view of the cited Chen reference as set forth in section 13 of the last Office Action.

### ***Conclusion***

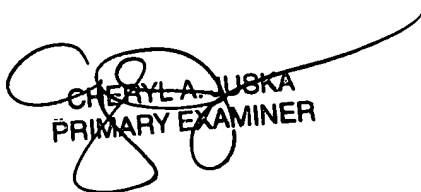
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1771

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj

December 4, 2006